

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TIMOTHY HAPKE,

Plaintiff,

v.

CITY OF EDMONDS; LINDA BINKLEY,
in her individual and official capacity as a
police officer; LINDA BINKLEY and
WILLIAM BINKLEY, a marital community;
and DOES 1-4, in their official capacities as
officers, representatives, employees, agents or
contractors of the City of Edmonds Police
Department,

Defendants.

No. C05-46Z

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff's motion for partial summary judgment, docket no. 25, is DENIED. Plaintiff's motion for partial summary judgment based on strict liability pursuant to RCW 16.08.040 is DENIED because there are material issues of fact as to whether plaintiff was "in or on a public place or lawfully in or on a private place" at the time of the incident and whether the City of Edmonds was the "owner" of dog Nico within the meaning of RCW 16.08.040. The Court has concluded that RCW 16.08.040 otherwise applies to police dogs for the reasons stated in Judge Shea's Order in Rogers v. City of Kennewick, CV04-5028EFS, see pages 42-44 of Order. Exhibit B to Decl. of Breean Beggs, docket no. 35. Plaintiff's motion for partial summary judgment based on common law strict liability is DENIED because there are material issues of fact as to whether Nico was a vicious or dangerous dog.

(2) Defendant's motion to strike, docket no. 30, is STRICKEN AS MOOT.

1 (3) Plaintiff's motion to strike, docket no. 37, is also STRICKEN AS MOOT.

2 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of
3 record.

4 Filed and entered this 7th day of September, 2005.

5 BRUCE RIFKIN, Clerk

6 s/ Casey Condon

7 By _____
8 Casey Condon
9 Deputy Clerk
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26